

FILED

FEB 24 2017

Judge Thomas M. Durkin
United States District Court

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SHABI Z. HUSSAIN,

Plaintiff,

v.

FEDERAL EXPRESS CORPORATION,

Defendant.

No. 12 C 7693

Honorable Thomas M. Durkin

FINAL JURY INSTRUCTIONS

FUNCTIONS OF THE COURT AND THE JURY

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. I will now instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially.

Nothing I say now, and nothing I did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

EVIDENCE

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence and stipulations.

A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

WHAT IS NOT EVIDENCE

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or if I struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have heard or seen outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

DEMONSTRATIVE EXHIBITS

Certain demonstrative exhibits have been shown to you. Those are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts. They will not be given to you to take back to the jury room when you deliberate.

DEPOSITION TESTIMONY

During trial, certain testimony was presented to you by the reading of a deposition. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

Deposition testimony is entitled to the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify.

LAWYER INTERVIEWING WITNESS

It is proper for a lawyer to meet with any witness in preparation for trial.

NOTE-TAKING

Any notes you took during this trial are only aids to your memory. The notes are not evidence. If you did not take notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony. You will not have the opportunity to review any portions of the transcript during your deliberations.

DEFINITION OF "DIRECT" AND "CIRCUMSTANTIAL" EVIDENCE

You may have heard the phrases "direct evidence" and "circumstantial evidence." Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, "I was outside a minute ago and I saw it raining." Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

WEIGHING THE EVIDENCE

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

TESTIMONY OF WITNESSES (DECIDING WHAT TO BELIEVE)

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

PRIOR INCONSISTENT STATEMENTS OR ACTS

You may consider statements given by a witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony. With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

NUMBER OF WITNESSES

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

ABSENCE OF EVIDENCE

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

CONSIDERATION OF ALL EVIDENCE

In determining whether any fact is proven, you should consider all of the evidence bearing on the question regardless of who introduces it.

ALL LITIGANTS EQUAL BEFORE THE LAW

In this case the defendant is a corporation. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

BURDEN OF PROOF

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

EMPLOYMENT DISCRIMINATION INSTRUCTION

Shabi Hussain claims that she was denied promotion to the GYY Senior Manager position because of her gender and national origin. To succeed on this claim, Shabi Hussain must prove by a preponderance of the evidence that she was denied promotion to the GYY Senior Manager position because of her gender or national origin. To determine that Shabi Hussain was denied promotion to the GYY Senior Manager position because of gender or national origin, you must decide that FedEx would have promoted her to the GYY Senior Manager position had Shabi Hussain been male or non-Indian but everything else had been the same.

If you find that Shabi Hussain has proved this by a preponderance of the evidence, then you must find for Shabi Hussain. However, if you find that Shabi Hussain did not prove this by a preponderance of the evidence, then you must find for FedEx.

REASONABLENESS OF DEFENDANT'S ACTION

In deciding Shabi Hussain's claim, you should not concern yourselves with whether FedEx's actions were wise, reasonable, or fair. Rather, your concern is only whether Shabi Hussain has proved that FedEx discriminated against her because of her gender and national origin.

WHETHER TO CONSIDER DAMAGES

If you find that Shabi Hussain proves either of her claims against FedEx, then you must determine what amount of damages, if any, Shabi Hussain is entitled to recover. Shabi Hussain must prove her damages by a preponderance of the evidence.

If you find that Shabi Hussain fails to prove either of her claims, then you will not consider the question of damages.

COMPENSATORY DAMAGES

You may award compensatory damages only for injuries that Shabi Hussain proves by a preponderance of the evidence were caused by FedEx's wrongful conduct.

Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

In calculating damages, you should not consider the issue of lost wages and benefits. The court will calculate and determine any damages for past or future lost wages and benefits.

You should consider the mental and emotional pain and suffering that Shabi Hussain has experienced and is reasonably certain to experience in the future, in calculating compensatory damages.

No evidence of the dollar value of mental and emotional pain and suffering needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate Shabi Hussain for the injury she has sustained.

PUNITIVE DAMAGES

If you find for Shabi Hussain, you may, but are not required to, assess punitive damages against FedEx. The purposes of punitive damages are to punish FedEx for its conduct and to serve as an example or warning to FedEx and others not to engage in similar conduct in the future. Shabi Hussain must prove by a preponderance of the evidence that punitive damages should be assessed against FedEx. You may assess punitive damages only if you find that the conduct of FedEx's managerial employees was in reckless disregard of Shabi Hussain's rights. An action is in reckless disregard of Shabi Hussain's rights if taken with knowledge that it may violate the law.

Shabi Hussain must prove by a preponderance of the evidence that FedEx's managerial employees acted within the scope of their employment and in reckless disregard of Shabi Hussain's right not to be discriminated against. In determining whether George Truesdale was a managerial employee of FedEx, you should consider the kind of authority FedEx gave him, the amount of discretion he had in carrying out his job duties and the manner in which he carried them out.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either/any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of FedEx's conduct;

- the impact of FedEx's conduct on Shabi Hussain;
- the relationship between Shabi Hussain and FedEx;
- the likelihood that FedEx would repeat the conduct if an award of punitive damages is not made;
- the relationship of any award of punitive damages to the amount of actual harm that Shabi Hussain suffered.

SELECTION OF PRESIDING JUROR; USE OF VERDICT FORM

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you. Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill it in and date it, and all of you will sign it.

COMMUNICATION WITH COURT

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the court security officer, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

FINAL INSTRUCTION

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.